

## IN THE DISTRICT COURT OF RED WILLOW COUNTY, NEBRASKA

SUZETTE D. DUTCHER, an individual,	)	
	)	Case No. CI 18-____
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	
THE STATE OF NEBRASKA DEPARTMENT	)	
OF CORRECTIONS,	)	
	)	
Defendant.	)	

COMES NOW Suzette D. Dutcher, and for her causes of action against Defendant, The State of Nebraska Department of Corrections, state and alleges as follows:

**PRELIMINARY STATEMENT**

1. Plaintiff, Suzette D. Dutcher, brings this action against The State of Nebraska Department of Corrections, for violations of the Americans with Disabilities Act of 1990 ("ADA") as amended by the ADA Amendments Act of 2008 ("ADAAA"), 42 U.S.C. §§ 12101 to 12213 (collectively, the "ADA") and The Nebraska Fair Employment Practice Act ("NFEPA"), Neb. Rev. Stat. § 48-1104. Plaintiff's causes of action arise from Plaintiff's employment agreement and relationship with Defendant.

2. Defendant hired Plaintiff in February 2002. During her tenure at The State of Nebraska Department of Corrections, Plaintiff performed her work satisfactorily. Despite Plaintiff's many achievements, Defendant discriminated against and fired her for her disabilities, record of disabilities, and in retaliation for her requests for a reasonable accommodation for her disability. As a result, Plaintiff has suffered significant emotional and monetary damages.

### **JURISDICTION**

3. This Court has subject-matter jurisdiction over this case pursuant to Neb. Rev. Stat. § 24-302 because there is an actual and justiciable controversy between the parties to this lawsuit. This Court has personal jurisdiction over Defendant because Defendant's principal place of business is in Nebraska, and Plaintiff alleges Defendant caused tortious injury to Plaintiff in Nebraska. Personal jurisdiction over Defendant complies with the Nebraska and the United States Constitutions.

### **VENUE**

4. Venue is proper in Red Willow County pursuant to Neb. Rev. Stat. § 25-403.01 because a substantial part of the events that give rise to the above-captioned lawsuit took place in Red Willow County.

### **CONDITIONS PRECEDENT**

5. On June 27, 2017, Plaintiff timely filed charges of disability, age, sex, and retaliation with the Nebraska Equal Opportunity Commission (NEOC).

6. On or about June 15, 2018, the NEOC issued letters of Commission Determination regarding the charges. Plaintiff requested a substantial weight review.

7. On or about August 9, 2018, the U.S. Equal Employment Opportunity Commission (EEOC) issued a Dismissal and Notice of Rights.

8. Plaintiff has satisfied all private, administrative, and judicial prerequisites to commencing this action.

### **PARTIES**

9. Plaintiff is a 53 year old woman with a knee injury residing in Culbertson, Nebraska.

10. Plaintiff was at all relevant times an employee of Defendant, as defined by the ADA and NFEPA.

11. Defendant The State of Nebraska Department of Corrections is tasked with the general duty of housing and processing inmates and those held because of charges or convictions related to crimes in the jurisdiction and other areas. Defendant was at all relevant times an “employer” and/or “person” as that term is defined under the ADA and NFEPA (covering “governments, governmental agencies, political subdivisions...” in the case of the ADA, and “the State of Nebraska, governmental agencies, and political subdivisions” in the case of the NFEPA).

### **FACTS**

11. Plaintiff began working for Defendant in 2002 as a CDC Supervisor at Defendant’s Work Ethic Camp in McCook, Nebraska.

12. During her tenure, Plaintiff’s work performance met or exceeded Defendant’s legitimate expectations. Plaintiff’s reviews of her performance were consistently satisfactory and/or excellent.

13. On April 21, 2015, while participating in job training in take-down techniques, requested by Defendant, Plaintiff suffered an injury to her right knee.

14. Defendant was timely notified of the injury.

15. Plaintiff underwent surgeries in July and September-October for 2015 to fix her right knee. She received medical restrictions of no squatting, stooping, twisting, bending, crawling, or kneeling as well as varied lifting restrictions.

16. Plaintiff was initially accommodated by Defendant. Plaintiff was initially able to ask other employees to perform any lifting that exceeded Plaintiff’s restrictions.

17. Defendant, by and through a Human Resource Representative, indicated Plaintiff had to be accompanied at all times by a Level 3 PPCT-certified employee any time Plaintiff interacted with inmates.

18. Plaintiff's injury prevented Plaintiff from certifying in or performing Level 3 PPCT.

19. Performing Level 3 PPCT take down techniques and restraints on inmates was not part of Plaintiff's regular job duties. As a CDC supervisor, Plaintiff did not carry handcuffs and was working outside of the inmate section. Furthermore, at any given point in time, Plaintiff was reasonably close to other employees of Defendant trained in Level 3 PPCT, such as regularly-posted correctional officers.

20. On September 15, 2016, Plaintiff received a letter from Defendant, by and through one of its Wardens, stating it had been a year since restrictions were imposed and Plaintiff still had restrictions. Plaintiff was informed she could not remain in her position if she continued to have restrictions, and was given ninety days to find another position or be terminated.

21. Plaintiff's supervisor requested Plaintiff's position be downgraded to Level 2 PPCT which is referred to as "flee and evade" and is in closer alignment with Plaintiff's actual job duties. This would allow Plaintiff to keep her job and alleviate the perceived restriction.

22. In October or November of 2016, Defendant, by and through a Human Resources Representative, informed Plaintiff the requested downgrade would not happen. There were allegedly no other positions available at the location where Plaintiff worked which would accommodate Plaintiff's abilities.

23. On December 16, 2016, Plaintiff was terminated for failing to complete Level 3 PPCT training and allegedly failing to fulfill the regular duties of her position, which Plaintiff denies. Plaintiff did the same job from date of hire to termination of employment. Her accommodations fit into her daily duties.

24. Plaintiff engaged in Defendant's internal grievance process, to no avail.

**COUNT I: VIOLATION OF THE NEBRASKA FAIR EMPLOYMENT PRACTICES ACT**

25. Plaintiff incorporates by this reference Paragraphs 1 through 24 of this Complaint as though fully set forth herein.

26. Plaintiff was at all relevant times an employee of Defendant for purposes of the Nebraska Fair Employment Practices Act.

27. Plaintiff fulfilled all material terms and conditions of employment at all relevant times.

28. Defendant's proffered reason for terminating Plaintiff was pretextual.

29. Defendant terminated Plaintiff on the basis of her disability, in violation of the Nebraska Fair Employment Practices Act.

30. The violation directly and proximately caused Plaintiff damage

**COUNT II: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT**

31. Plaintiff incorporates by this reference Paragraphs 1 through 30 of this Complaint as though fully set forth herein.

32. Plaintiff is a disabled person as defined by the ADA, and Defendant was aware of Plaintiff's disability.

33. Defendant violated the ADA by:

- a. Failing to provide Plaintiff a reasonable accommodation;

- b. Subjecting Plaintiff to an adverse employment action on the basis of her disability; and
- c. Retaliating against Plaintiff for attempting to exercise her rights under the ADA.

34. The violations directly and proximately caused Plaintiff damage.

WHEREFORE, Plaintiff prays for judgment against the Defendant for past lost wages and benefits, reinstatement and/or front pay, compensatory damages, reasonable attorney fees, and for such other and further relief as the Court deems just and equitable in the premise.

#### **DEMAND FOR JURY TRIAL**

Plaintiff requests a jury trial on all issues in the above-captioned matter.

SUZETTE D. DUTCHER, Plaintiff

BY SMITH, JOHNSON, BAACK, PLACZEK,  
ALLEN, CONNICK & HANSEN  
104 N. Wheeler Avenue  
Grand Island, NE 68801  
(308) 382-1930  
thansen@gilawfirm.com

By /s/ Tanya J. Hansen  
Tanya J. Hansen, #23306

5370-1/716625

\*\*\* EFILED \*\*\*

## SERVICE RETURN

Case Number: D48C1180000118

Transaction ID: 0007579838

Filing Date: 10/10/2018 08:14:10 AM CDT

RED WILLOW DISTRICT COURT  
Red Willow County Courthouse  
502 Norris Ave  
McCook NE 69001

To:

Case ID: CI 18 118 Dutcher v. State of NE Dept of Correction

Received this Summons on \_\_\_\_\_, I hereby certify that on \_\_\_\_\_

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to: State of Nebraska Dept. of Corrections % Office of the Attorney General 345 State Capitol Lincoln, NE 68508</p> <p>2. Article Number (Transfer from service label) 7018 1130 0002 1546 9055</p>	<p>A. Signature x <u>Catherine Bligh</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>Catherine Bligh</u></p> <p>C. Date of Delivery SEP 19 2018</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes if YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type  <input type="checkbox"/> Adult Signature  <input type="checkbox"/> Adult Signature Restricted Delivery  <input checked="" type="checkbox"/> Certified Mail®  <input type="checkbox"/> Certified Mail Restricted Delivery  <input type="checkbox"/> Collect on Delivery  <input type="checkbox"/> Collect on Delivery Restricted Delivery  <input type="checkbox"/> Insured Mail  <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)  <input type="checkbox"/> Priority Mail Express®  <input type="checkbox"/> Registered Mail™  <input type="checkbox"/> Registered Mail Restricted Delivery  <input type="checkbox"/> Return Receipt for Merchandise  <input checked="" type="checkbox"/> Signature Confirmation™  <input type="checkbox"/> Signature Confirmation Restricted Delivery </p>

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

### CERTIFIED MAIL PROOF OF SERVICE

Copies of the Summons were mailed by certified mail.

TO THE PARTY: State of NE Dept of CorrectionsAt the following address: % Office of the Attorney General345 State Capitol, Lincoln, NE 68508on the 14<sup>th</sup> day of September 2018, as required by Nebraska state law.Tanya J. HansenPostage \$ 6.88 Attorney for: Suzette DutcherThe return receipt for mailing to the party was signed on September 19, 2018.

To: State of NE Dept of Corrections  
% Office of the Attorney General  
345 State Capitol  
Lincoln, NE 68508

From: Tanya J Hansen  
Allen, Connick & Hansen  
104 N Wheeler  
Grand Island, NE 68801

# ATTACH RETURN RECEIPT & RETURN TO COURT

## Certificate of Service

I hereby certify that on Wednesday, October 10, 2018 I provided a true and correct copy of the Return-Summons/Alias Summons to the following:

State of NE Dept of Corrections service method: No Service

Signature: /s/ Hansen,Tanya Jo (Bar Number: 23306)



IN THE DISTRICT COURT OF RED WILLOW COUNTY, NEBRASKA

SUZETTE D. DUTCHER, an individual,

Plaintiff,

vs.

THE STATE OF NEBRASKA DEPARTMENT  
OF CORRECTIONS,

Defendant.

Case No. CI 18-\_\_\_\_

PRAECIPE FOR SUMMONS

Please issue summons directed to Defendant as follows:

Office of the Attorney General  
345 State Capitol  
Lincoln, NE 68508

Service shall be made on Defendant by certified mail, with a copy of the  
Complaint and Summons issued herein.

Please endorse upon said Summons that if Defendant fail to appear and answer,  
judgment may be entered for the relief demanded in the Complaint.

SUZETTE D. DUTCHER, Plaintiff,

BY SMITH, JOHNSON, BAACK, PLACZEK,  
ALLEN, CONNICK & HANSEN  
104 N. Wheeler Avenue  
Grand Island, NE 68801  
(308) 382-1930  
thansen@gilawfirm.com

By /s/ Tanya J. Hansen  
Tanya J. Hansen, #23306

5370-1/717653

Image ID:  
D00009956D48

**SUMMONS**

Doc. No. 9956

IN THE DISTRICT COURT OF Red Willow COUNTY, NEBRASKA  
Red Willow County Courthouse  
502 Norris Ave  
McCook NE 69001

Suzette D. Dutcher v. State of NE Dept of Corrections

Case ID: CI 18 118

TO: State of NE Dept of Corrections

**FILED BY**

Clerk of the Red Willow District Court  
09/14/2018

You have been sued by the following plaintiff(s):

Suzette D Dutcher

Plaintiff's Attorney: Tanya J Hansen  
Address: Allen, Connick & Hansen  
104 N Wheeler  
Grand Island, NE 68801  
Telephone: (308) 382-1930

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: SEPTEMBER 14, 2018 BY THE COURT:

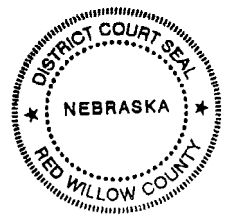
*Lori O'Dea*  
Clerk

PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

State of NE Dept of Corrections  
% Office of the Attorney General  
345 State Capitol  
Lincoln, NE 68508

Method of service: Certified Mail  
Special Instructions:  
Please serve copy of Complaint.

You are directed to make such service within ten days after the date of issue, and file with the court clerk proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.



**SERVICE RETURN**

Doc. No. 9956

RED WILLOW DISTRICT COURT  
 Red Willow County Courthouse  
 502 Norris Ave  
 McCook NE 69001

To:

Case ID: CI 18 118 Dutcher v. State of NE Dept of Correctio

Received this Summons on \_\_\_\_\_, \_\_\_\_\_. I hereby certify that on

\_\_\_\_\_, \_\_\_\_ at \_\_\_\_\_ o'clock \_\_M. I served copies of the Summons upon the party:

by \_\_\_\_\_

as required by Nebraska state law.

Service and return \$ \_\_\_\_\_

Copy \_\_\_\_\_

Mileage \_\_\_\_miles \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

Date: \_\_\_\_\_ BY: \_\_\_\_\_  
 (Sheriff or authorized person)

**CERTIFIED MAIL  
 PROOF OF SERVICE**

Copies of the Summons were mailed by certified mail,  
 TO THE PARTY: \_\_\_\_\_

At the following address: \_\_\_\_\_

on the \_\_\_\_\_ day of \_\_\_\_\_, as required by Nebraska state law.

Postage \$ \_\_\_\_\_ Attorney for: \_\_\_\_\_

The return receipt for mailing to the party was signed on \_\_\_\_\_, \_\_\_\_\_.

To: State of NE Dept of Corrections  
 % Office of the Attorney General  
 345 State Capitol  
 Lincoln, NE 68508

From: Tanya J Hansen  
 Allen, Connick & Hansen  
 104 N Wheeler  
 Grand Island, NE 68801

**ATTACH RETURN RECEIPT & RETURN TO COURT**